

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
AUGUST 10, 2016**

**CALL TO
ORDER
6:00 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Marie Hickey-AuClaire, Dean Sirucek, Jim Heim, Kevin Lake, Jeff Larsen, Mike Horn, and Greg Stevens. Ron Schlegel had an excused absence. Mark Mussman represented the Flathead County Planning & Zoning Office.

There were 24 people in the audience.

**APPROVAL OF
MEETING
MINUTES
6:01 pm**

Stevens made a motion, seconded by Sirucek to approve the July 13, 2016 meeting minutes.

**BOARD
DISCUSSION
6:01 pm**

None

**ASK THE
QUESTION
6:01 PM**

Sirucek asked the question

**ROLL CALL TO
APPROVE
MEETING
MINUTES
6:01 pm**

On a roll call vote the motion passed unanimously.

**APPROVAL OF
WORKSHOP
MINUTES
6:01 pm**

Stevens made a motion, seconded by Sirucek to approve the July 13, 2016 workshop minutes.

**ASK THE
QUESTION
6:01 pm**

Sirucek asked the question.

**ROLL CALL
APPROVE
WORKSHOP**

On a roll call vote the motion passed unanimously.

MINUTES

6:02 pm

**PUBLIC
COMMENT**

*(not related to
agenda items)*

6:02 pm

None

**WHITEFISH
RIVER TRAILS
PH 2-5**

(FPP-16-01)

6:03 pm

A request from Conservation Land Use, LLC for preliminary plat approval of Whitefish River Trails Phase 2-5; a 17-lot clustered residential subdivision located approximately 1/3 mile east of Whitefish Stage along Mannington Street. The proposed subdivision would create 17 single-family residential lots with 16 of the lots clustered toward the western side of the property. A 42.48 acre parcel located along Whitefish River serves as the open space lot and can be developed with one single family dwelling per the Flathead County Zoning Regulations. The clustered lots would be served by shared wells and individual wastewater treatment systems and the open space lot will utilize an individual well and septic system. Primary access to the subdivision would be from Mannington Street and the applicants are requesting a variance to paving the rest of Mannington Street to Lot 21 to Road and Bridge Department standard road width. **This is a continuation of the June 8, 2016 Planning Board meeting.**

**STAFF REPORT
6:05 pm**

Mussman reviewed updated Staff Report FPP-16-01 for the Board.

**BOARD
QUESTIONS
6:05 pm**

Stevens asked if flag lots were violations of the zoning regulations or the subdivision regulations.

Mussman stated the zoning regulations.

**APPLICANT
PRESENTATION
6:09 pm**

Eric Mulcahy-Sands Surveying-2 Village Loop, Kalispell stated he represented the applicant. He stated the applicant made three changes from the original application. One was cash in lieu of parkland versus using the open space lot as parkland. In concert with that the applicant eliminated all of the vehicle and pedestrian access to lot 21 from all the other lots in the

subdivision; essentially the sixty foot easement to the north would disappear and the sixty foot easement that goes to lot 21 would be solely for lot 21. The USDA has an easement for the term of the conservation easement. He stated the applicant had requested a variance to the road standards originally to lot 21 and the applicant is still requesting a variance to the road paving standards. He stated the road would meet county standards on everything but the paving width. Since it is only providing access to one lot within the subdivision the applicant considered it a driveway and wanted to pave it to the 12 foot driveway standard.

Mulcahy went over the history of the lot. He stated all the road in the subdivision would be paved to the 22 foot paving standard. Phase one was essentially ready for final plat. All roads in phase one have been paved to county standards, there is a tanker recharge facility that is over 30,000 gallons that has been approved by the West Valley Fire Marshal. A lot of the improvements done in phase 1 would benefit phases 2-5.

**BOARD
QUESTIONS
6:11 pm**

Larsen asked if the open space was big enough to cover phase one (1).

Mulcahy stated that the open space was big enough to cover phases one through five.

Sirucek stated he had a problem with the twelve foot driveway to lot 21. He stated normal size vehicles could not pass on that width.

Mulcahy stated the applicant could build the gravel surface to twenty feet, but they only wanted to pave it to twelve feet.

Heim asked if the road was along the southern or northern border.

Mulcahy stated it was the southern border.

**AGENCY
COMMENTS
6:15 pm**

None

**PUBLIC
COMMENT
6:21pm**

Board reviewed comments received after packets went out.

Susan Santangelo-2477 Whitefish Stage Road-stated she was against this application. She gave some history of the property.

The title company contacted her in February of 2015 saying a new easement was going in. This was four (4) month after they purchased their home. She talked about the problems associated with the easement going in and the need by the developer to get an approach permit. She stated she compromised on an approach permit with the developer which would allow for 12 lots in a minor subdivision. She was also concerned about safety. She stated that she would not agree to another approach permit adding more than the 12 lots already agreed to.

Natalie Maynard-2481 Whitefish Stage Road-stated that she had agreed to a joint use approach that would allow up to 12 residences. She talked about the problems created by the easement and how it affected the access to their property. She was also very concerned about safety. She talked about the line of sight exiting Mannington Street.

William Ashe-1870 Pine Grove Lane-spoke against the project. He spoke about the Conservation Easement stating it prohibits development until 2029. He was concerned about the wetlands on lot 21 and the determination in the zoning regulations that state wetlands are unsuitable for subdivisions. He felt lot 21 should not be included in the subdivision.

Ralph Hemp-1930 Pine Grove Lane-agreed with Ashe about most of lot 21 being unsuitable to build on. He talked about the variance request stating that an unpaved road would be detrimental to public health. He stated that regulations required all subdivision roads to be paved. He talked about the approach agreement between the Santangelo's and the Maynard's and the developer only being approved for 12 lots. He gave the Board a copy of the agreement.

Andrea Falcon-2075 Pine Grove Lane-stated she had mixed feelings on the subdivision. Her land borders lot 21 which under the subdivision regulations would make this lot undevelopable for perpetuity. She spoke about the project not being ethical and problems with the access road to lot 21.

Sirucek asked for clarification on using lot 21 as parkland.

Mulcahy stated it was the agricultural open space lot, and that the developer paid cash in lieu of parkland.

Horn asked about the total acreage involved in project.

Mulcahy stated there was 68 acres.

There was some discussion on the use of lot 21.

**APPLICANT
REBUTTAL
7:03 pm**

None

**BOARD
QUESTIONS
7:03 pm**

Horn asked why lot 21 should be used to calculate the density of the development.

Mulcahy stated that under the clustering provisions in the subdivision regulations, Section 5.09.020(6) essentially stated that the density is based off the acreage of the parent tract. There are sections that state you should not have building lots in floodplain, wetlands, or steep slopes graded at thirty (30) percent, and there isn't.

The Board discussed the parkland requirement at length with Mulcahy.

Hickey-AuClaire asked if lot 21 could be divided after the conservation easement expired.

Mulcahy stated no there would be a deed restriction placed on it.

Mussman stated that protection of the open space lot was outlined in the zoning regulations.

Horn asked about the access off of Whitefish Stage and if there was an easement recorded on a certificate of survey.

Mulcahy stated he believed so.

Stevens asked about the joint access permit and if they could change it.

Mulcahy stated they could not apply for changes to the permit without an approved preliminary plat.

Stevens asked about the section of the staff report that stated; 'It was during the review period that staff made it aware to the applicant that per Section 4.7.7 (o), *"Only one active approved preliminary plat is permitted on an individual lot or parcel at a time. Any existing approved preliminary plat*

shall be withdrawn and file terminated at the time of approval of the second preliminary plat.”’ He asked when the applicant would be applying for final plat on phase one.

Mulcahy said August 11, 2016.

The Board discussed the above at length.

Larsen asked if SAG zoning allowed flag lots and how could the Board approve a subdivision that did not comply with zoning.

Mulcahy stated there were two (2) options; One option was to build the subdivision road or pave the driveway to 22 feet, then it would be a subdivision road or as suggested in the conditions the developer would have to request a variance from the Board of Adjustment for the flag lot which if not approved would require that the driveway to lot 21 be paved to 22 feet making it a subdivision road.

Sirucek asked for clarification on the joint access permit stating that the applicant could not apply for a new permit unless and until they had an approved preliminary plat.

Mulcahy said yes.

**STAFF
REBUTTAL
7:20 pm**

None

**BOARD
DISCUSSION
7:20 pm**

None

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP-16-01)
7:20 pm**

Larsen made a motion seconded by Stevens to adopt staff report FPP-16-01 as findings-of-fact.

**BOARD
DISCUSSION
7:20 pm**

Larsen stated he could not vote for the variance to the road as he could not see how the applicant could meet the criteria for a variance. He said if they did not approve the variance and the applicant had to build the road to lot 21 as a subdivision road would that take care of the flag lot. He stated that as it is being proposed, it would be creating a flag lot and he could not vote for

that.

Stevens said one of his objections was that you could not have two preliminary plats on a property at the same time stating that if the final plat was filed on phase one this would be a moot point. He agreed that the applicant did not qualify for the variance. He stated that lot 21 was a flag lot and against zoning regulations.

Mulcahy stated that if the applicant built the road to lot 21 to county standards it is not a flag lot, therefore, if the variance is denied, the road would be built to county standards and there would not be a flag lot.

The Board discussed this issue at length.

Heim asked if the joint access permit was addressed as part of the findings.

Hickey-AuClaire stated it was addressed in Finding 5 and as part of Condition 22.

**ASK THE
QUESTION
7:33 pm**

Sirucek asked the question.

**ROLL CALL TO
ADOPT F.O.F.
(FZC-16-01)
7:33 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
DENIAL
(FPP-16-01)
7:34 pm**

Stevens made a motion seconded by Lake to adopt Staff Report FPP-16-01 and recommend denial to the Board of County Commissioners.

**BOARD
DISCUSSION
7:35 PM**

Heim stated that the reason he was against the proposal was that the original joint access permit was for 12 lots.

Sirucek stated his problem was with the access to lot 21 and the creation of a flag lot.

Larsen stated his problem was also with the creation of a flag lot.

**ASK THE
QUESTION
7:39 pm**

Sirucek asked the question.

**ROLL CALL TO
RECOMMEND
DENIAL
(FPP-16-01)
7:39 pm**

On a roll call vote the motion passed unanimously.

**FOX HILL
ESTATES PH 3
(FPP-16-04)
7:50 pm**

A request from Terry & Mark Leighty for preliminary plat approval of Fox Hill Estates Phase 3, a proposal to create 8 lots intended for single family use on 12.57 acres and located off Mennonite Church Road. The proposed subdivision lots would be served by community water and sewer systems. The property is currently unzoned and can legally be described as Tract 4 in Section 10, Township 28 North, Range 20 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
7:51 pm**

Mussman reviewed Staff Report FPP-16-04 for the Board.

**BOARD
QUESTIONS
7:53 pm**

Sirucek asked about the interpretation of the impact to fish and wildlife habitats and setbacks. He stated that the minimum setbacks that Fish, Wildlife, and Parks requested were not being met.

Mussman stated this could be addressed during Board discussion.

**APPLICANT
PRESENTATION
7:54 pm**

Eric Mulcahy-Sands Surveying-2 Village Loop-stated he was representing the applicant. He stated this was the fourth and final phase of a four phase development. This phase had previously been approved but allowed to expire twice before for various reasons. All improvements are in place and the proposal has not deviated from the original proposal. The applicant did rewrite the Environment Assessment due to changing regulations and had the wetlands delineated and placed those on the plat. Working with DNRC established a fixed flood elevation for this property and that is shown on the preliminary plat. A number of permits did not reach completion in the initial development and

those are a condition of approval. This includes securing the water rights for a public water system and establishing the as-builts and finishing out the DEQ approval of the public sewer system, both of which are in place and operating to certain portions of the property. These issues will be addressed before final plat.

**BOARD
QUESTIONS
8:00 pm**

Sirucek asked about maintenance on the sewer treatment system and a maintenance plan.

Mulcahy stated a maintenance plan was done but not followed through on.

Larsen asked about condition 19 annexations into the Fox Hills Estates Water and Sewer District and how that was done.

Heim stated the Board of Directors for the district approved the annexation.

**AGENCY
COMMENTS
8:02 pm**

None

**PUBLIC
COMMENT
8:04 pm**

Noel Gorton-578 Creston Road-explained the history of the project and that when the project was approved the first time there was not a condition to pave Mennonite Church Road. The second time it went through approval, a RSID was in the process of approval and the applicant's used this timing to avoid paving 1000 feet of the roadway. She wants the applicants to pay for the RSID for the lots. She also noted that there were water issues.

Rich Nehl-408 Fox Den Trail-objects to the proposal because a water right was not obtained for the existing wells. The cost of obtaining the water right should not be paid for by the current owners of lots. There also were weed issues that should be reviewed by the County Weed department.

Mike Corbett 356 Fox Den Trail- explained the history of this proposal and the issue of paving Mennonite Church Road. He would like to see the new lots participate in the RSID. He also noted that new lots were not required to pay taxes for parkland as it was owned by phase one. He wanted the new lots to participate in the taxes for parkland also. He also noted that it's impossible to access the parkland across Blaine Creek and wants to see a bridge. He noted that this area can be boggy and he has

seen tractors get stuck in the mud. He would also like to see the CC&Rs be the same as Phase 1 and 2 as these are larger lots with larger homes and the homes in this phase should be of the same character.

Dennis Humphrey-367 Fox Den Trail-wants to see a 50-60 foot buffer around the riparian area. He also noted that you can't put drain fields on these lots so the water is being pumped up behind phase four. He wants to ensure that houses don't have basements. He also wants to see that all the water resource conditions should be noted on the plat so that buyers are aware of the water issues. He has had issues with water flooding the basement.

Jean Murray-790 Fox Den Trail-was concerned with the drinking water. There is a manual chlorination system. . It is done by volunteers and the young working families and senior citizens aren't able to do this and it's hard to find volunteers. She wants to see an automated system. She also noted water issues and ponding in the area around the drain field.

**APPLICANT
REBUTTAL
8:36 pm**

Mulcahy stated with regard to the comment on the riparian area, the closest building site was 60 feet from the creek so the applicant is not building in the floodplain or wetland areas.

**BOARD
QUESTIONS
8:36 pm**

Stevens asked about the access to the parkland across the creek.

Leighty's stated that there is an easement along the southern boundary across the creek.

Larsen asked about the ownership of the common area.

Leighty explained that the open space is owned by the developers until a certain amount of build out of the development is complete; then it will be transferred to the HOA.

Stevens asked about the water rights and septic permit issues.

Mulcahy explained that the previous engineer certified completion when it was not. The developer was not initially aware of the issues but they are now working with the DEQ to resolve the issues.

The Leighty's explained that the county initially didn't require a permit for the system as it was solely a State review and approval process.

Larson noted that it could have been an issue of confusion in what DEQ approved. Even with DEQ approval the applicant would still need septic permits.

**STAFF
REBUTTAL
8:47 pm**

None

**BOARD
QUESTIONS
8:47 pm**

None

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP-16-04)
8:47 pm**

Larsen made a motion seconded by Heim to adopt staff report FPP-16-04 as findings-of-fact.

**BOARD
DISCUSSION
8:47 pm**

Larsen explained that DEQ and DNRC did not address water rights in the DEQ review process until about a year ago. DEQ will not now grant approval without a DNRC water right provisional letter.

Stevens noted that CC&Rs are private documents and the county will not require building standards as part of the proposal.

Larson confirmed with the applicant that the lot would be added to the RSID assessment.

Sirucek noted concern with the wetland buffer and the comment from FWP.

**ASK THE
QUESTION
8:52 pm**

Sirucek asked the question.

**ROLL CALL TO
ADOPT F.O.F.
(FPP-16-04)
8:52 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FPP-16-04)
8:52 pm**

Larsen made a motion seconded by Heim to adopt Staff Report FPP-16-04 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION
8:52 pm**

Larson noted that the conditions appear to be sufficient to cover the water resources issues and protect the landowners. CC&Rs also appear to be appropriate in the developers owning the common area until a threshold is met in homeownership within the development.

Sirucek would like to see an additional condition to address the close proximity the wetlands, approximately 25 linear feet and only 2 foot elevation distance. He would like the realtor to pass on information regarding groundwater to potential buyers. It was pointed out that Condition #22 addresses this but Sirucek wanted this to be expressly directed to Lot 4 and 5.

Mussman suggested changing Condition 22 to read lots 1-6 shall not have basements.

**MOTION TO
AMEND
CONDITION 22
9:03 pm**

Larson made a motion seconded by Sirucek to amend Condition 22 to replace condition language to forbid basements on Lots 1-6.

**BOARD
DISCUSSION
9:03 pm**

None

**ASK THE
QUESTION
9:03 pm**

Larsen asked the question.

**ROLL TO
AMEND
CONDITION 22
9:03 pm**

On a roll call vote the motion passed unanimously.

BOARD

There was some discussion about access to the parkland area

DISCUSSION
9:03 pm

and adding a condition to build a bridge.

Mussman stated they would need a floodplain permit.

ASK THE
QUESTION
9:15 pm

Sirucek asked the question.

ROLL CALL TO
RECOMMEND
APPROVAL
(FPP-16-04)
9:15 pm

On a roll call vote the motion passed unanimously.

CONSULTING
INVESTING
MANAGEMENT,
LLC
(FZC-16-07)
9:17 pm

A zone change request in the Southeast Rural Whitefish and Rural Whitefish Zoning Districts by Consulting Investing Management, LLC. The proposal would change the zoning on a parcel containing approximately 17.428 acres from SAG-10 (*Suburban Agricultural*) to SAG-5 (*Suburban Agricultural*). The subject property is located at 465 Armory Road and can legally be described as follows:

A tract of land located in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 32 and in the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 33 of Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, known as: Tract 1 of Certificate of Survey No. 5446.

Larsen recused himself from this application.

STAFF REPORT
9:18 pm

Mussman reviewed the Staff Report FZC-16-06 for the Board.

BOARD
QUESTIONS
9:20 pm

Sirucek asked about comments from the Whitefish Planning Board.

Mussman stated the office had received none.

APPLICANT
PRESENTATION

Eric Mulcahy-Sands Surveying-2 Village Loop-stated he represented the applicant. He stated the lot would probably be annexed into the city. The applicants wanted to split the lot and live on one parcel and sell the rest. The applicant had been in contact with the City sewer and would probably connect to that.

BOARD

None

QUESTIONS**9:23****AGENCY
COMMENTS****9:23 pm**

None

**PUBLIC
COMMENT****9:23 pm**

None

**APPLICANT
REBUTTAL****9:23 pm**

None

**BOARD
QUESTIONS****9:23 pm**

None

**STAFF
REBUTTAL****9:23 pm**

None

**BOARD
QUESTIONS****9:23 pm**

None

**MAIN MOTION
TO ADOPT
F.O.F.****(FZC-16-06)****9:24 pm**

Sirucek made a motion seconded by Heim to adopt Staff Report FZC-16-06 as Findings of Fact.

**BOARD
DISCUSSION****9:24 pm**

None

**ASK THE
QUESTION****9:24 pm**

Sirucek asked the question.

**ROLL CALL TO
ADOPT F.O.F.****(FZC-16-06)****9:24 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZC-16-06)
9:25 pm**

Sirucek made a motion seconded by Lake to adopt Staff Report FZC-16-06 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION
9:26 pm**

None

**ASK THE
QUESTION
9:26 pm**

Sirucek asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZC-16-06)
9:26 pm**

On a roll call vote the motion passed unanimously.

**PATRICK
MACKIN
(FZC-16-07)
9:27 pm**

A zone change request in the Evergreen Zoning District by Patrick Mackin. The proposal would change the zoning on four (4) parcels containing approximately 6.79 acres from R-2 (*One Family Limited Residential*) to R-4 (*Two-Family Residential*). The properties are located at 507 and 525 E Evergreen Drive and 203 Harmony Road and can legally be described as follows:

Parcel A

Lot 1A of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland Day Acres, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Parcel B

Lot 2A of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland Day Acres, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Parcel C

Lot 6A of the Amended Plat of Lots 3, 4, 5, 6 & 7 of Hoiland Day Acres, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County,

Montana.

Parcel D

Lot 2 of Mackin Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

All parcels are located in Section 34, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
9:27 pm**

Mussman reviewed the Staff Report FZC-16-07 for the Board.

Mussman stated there was one change to staff report with regard to floodplain. This property was elevated outside the special flood hazard area.

**BOARD
QUESTIONS
9:28 pm**

**APPLICANT
PRESENTATION
9:28 pm**

Narda Wilson-184 Midway Drive, Columbia Falls stated she was representing the applicant and handed out a LOMA revalidation letter. Wilson talked about the location and stated currently the applicant had no plans for development at this time.

**BOARD
QUESTIONS
9:30 pm**

None

**AGENCY
COMMENTS
9:30 pm**

None

**PUBLIC
COMMENT
9:31 pm**

None

**APPLICANT
REBUTTAL
9:31 pm**

None

**BOARD
QUESTIONS
9:31 pm**

None

STAFF

None

REBUTTAL
9:31 pm

BOARD
QUESTIONS
9:32 pm

None

MAIN MOTION
TO ADOPT
F.O.F.
(FZC-16-07)
9:32 pm

Heim made a motion seconded by Sirucek to adopt Staff Report FZC-16-07 as Findings of Fact.

BOARD
DISCUSSION
9:32 pm

None

ASK THE
QUESTION
9:32 pm

Sirucek asked the question.

ROLL CALL TO
ADOPT F.O.F.
(FZC-16-07)
9:33 pm

On a roll call vote the motion passed unanimously.

MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZC-16-06)
9:33 pm

Heim made a motion seconded by Horn to adopt Staff Report FZC-16-07 and recommend approval to the Board of County Commissioners.

BOARD
DISCUSSION
9:33 pm

None

ASK THE
QUESTION
9:33 pm

Larsen asked the question.

ROLL CALL TO

On a roll call vote the motion passed unanimously.

**RECOMMEND
APPROVAL
(FZC-16-07)
9:33 pm**

OLD BUSINESS None
9:33pm

NEW BUSINESS None
9:34 pm

ADJOURNMENT Meeting was adjourned at approximately 9:35 pm on a motion by
9:35 pm Larsen. The next meeting will be held on September 14, 2016 at
6:00 pm.



Marie Hickey-AuClaire, Chairman



Danene Thornton, Recording Secretary

09/14/2016.

APPROVED AS SUBMITTED/CORRECTED: 09 / 14/ 16